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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

XENIA SIMMONS; ZHANA
McCULLOUGH; ARTHUR ROTTER;
GENE ROTTER; DANIELLE ROTTER;
and KELLY ANNE ROTTER,

Plaintiffs,

vs.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, et al.,

Defendants.

CASE NO. 2:21-cv-02215-TLN-DMC

**STIPULATION TO CORRECT RECORD
AND EXTEND TIME FOR
DEFENDANT'S REPLY TO
PLAINTIFF'S OPPOSITION TO
LIBERTY'S MOTION FOR SUMMARY
JUDGMENT; ORDER**

IT IS HEREBY STIPULATED by and between Plaintiffs Xenia Simmons, Arthur Rotter, Gene Rotter, Danielle Rotter, and Kellyanne Rotter ("Plaintiffs") and Defendant Liberty Mutual Fire Insurance Company ("Liberty"), by and through their respective attorneys of record, that Liberty shall withdraw its Reply papers filed in this matter on

1 January 30, 2023, Docket Document 27, and shall have ten (10) days within any Order
2 entered on this Stipulation, to file a new Reply and supporting papers in response to
3 Plaintiff's Opposition to Liberty's Motion for Summary Judgment.

4 The grounds for this stipulation are:

5 1. Plaintiffs maintain they served their Initial Disclosures by email on February
6 25, 2022 pursuant to an agreement between Plaintiffs and Liberty that each side could serve
7 their Initial Disclosures by email on that date. The email was transmitted by Christina
8 Whittington, a legal assistant with the Reiner law firm, but not received by Liberty's counsel.

9 2. The email transmitting Plaintiffs' Initial Disclosures was addressed to five
10 persons at the Ropers law firm, including Blake J. Russum and Kristina A. Fretwell,
11 Liberty's then lawyers of record. The email was improperly addressed to one of the five
12 persons, Sandra Richey, and a bounce-back message from the Ropers server was returned to
13 Ms. Whittington, who consequently assumed that the email addressed to Mr. Russum, Ms.
14 Fretwell and the two other Ropers persons had been properly received by each of the four
15 addressees.

16 3. For reasons unknown to both the Reiner firm and the Ropers firm, no one at
17 the Ropers firm received the Initial Disclosures in their email inboxes on February 25, 2022.

18 4. Mr. Russum and Ms. Fretwell thereafter believed that Plaintiffs had failed to
19 serve their Initial Disclosures, whereas Plaintiffs' counsel believed that the Initial Disclosures
20 had been timely received by Liberty's counsel of record.

21 5. On January 30, 2023, Liberty filed and served Reply papers which included
22 (1) the Declaration of Ms. Fretwell asserting that Plaintiffs had failed to serve their Initial
23 Disclosures, and (2) Objections to evidence on grounds that Plaintiffs had failed to serve
24 their Initial Disclosures, due to the absence of receipt of Initial Disclosures, and the
25 misunderstandings set forth in the preceding paragraphs.

26 6. Plaintiffs' counsel, Alexander F. Stuart, discovered the assertion that Plaintiffs
27 had failed to serve their Initial Disclosures upon reading Ms. Fretwell's declaration on
28

February 7, 2023, and immediately contacted the Reiner firm to determine whether the Initial Disclosures had not been served.

7. The Reiner firm investigated and confirmed its belief that the Initial Disclosures had in fact been transmitted on February 25, 2022 as the parties had agreed.

8. Mr. Stuart notified Mr. Russum the following day, February 8, 2023, that Ms. Fretwell's declaration contained a mistaken statement, and the Reiner firm transmitted a copy of the Initial Disclosures to Mr. Russum and others at the Ropers firm later that same day.

9. Mr. Russum confirmed on February 9, 2023 receipt of the Initial Disclosures transmitted on February 8, 2023.

10. After meeting and conferring, Plaintiffs' counsel and Liberty's counsel agreed that the record should be corrected, and they have agreed, for the ease of the court's review of Liberty's Reply papers and its decision on the Rule 56 motion, that Liberty would request leave of court to withdraw the Reply papers it filed on January 30, 2023, and file new Reply papers omitting contention that Plaintiffs failed to timely serve their Initial Disclosures.

All signatories to this Stipulation, and on whose behalf the filing is submitted, concur in the Stipulation's content and have authorized its filing.

DATED: February 17, 2023

REINER, SLAUGHTER & FRANKEL

By: /s/Russell Reiner
RUSSELL REINER
Attorneys for PLAINTIFFS

DATED: February 17, 2023

ROPERS MAJESKI PC

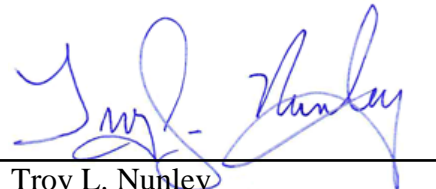
By: /s/Blake J. Russum
BLAKE J. RUSSUM
Attorneys for Defendant LIBERTY
MUTUAL FIRE INSURANCE
COMPANY

ORDER

Pursuant to the parties' stipulation, and good cause appearing therefore, Liberty's Reply papers filed on January 30, 2023 shall be deemed stricken, and Liberty shall have ten (10) days leave from entry of this Order within which to file its Reply, and supporting documents, in response to Plaintiff's Opposition to Liberty's Motion for Summary Judgment.

IT IS SO ORDERED.

DATED: February 17, 2023



Troy L. Nunley
United States District Judge